

U.S. Department of Justice



*United States Attorney
Southern District of New York*

86 Chambers Street
New York, New York 10007

November 9, 2021

BY ECF

The Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Tzumi Innovations, LLC v. Regan, et al.* No. 21 Civ. 122 (LGS)¹

Dear Judge Schofield:

With plaintiff Tzumi Innovations' consent, the Government respectfully requests that the Court enter an order authorizing the Government to file a portion of the administrative record in this case under seal. As provided by the Court's case management order, Dkt. No. 57, the Government will file the administrative record in this matter today. The bulk of that record contains non-confidential material that the Government will file in the public docket. However, the record also includes approximately 85 pages of information in the record that may constitute "confidential business information" ("CBI") protected from disclosure by EPA's regulations at 40 C.F.R. part 2, subpart B. These materials include a list of retailers selling Tzumi's devices, a list of imports of Tzumi's devices, and various communications between Tzumi, a retailer, and a private product testing company relating to Tzumi's Wipe Out! product that reference or attach a quote sheet, label artwork, and a test report.

Pursuant to EPA's regulations, EPA generally may not disclose information that is CBI. The regulations authorize the agency to disclose these materials as directed by a Court order, however. Accordingly, EPA respectfully requests, with Tzumi's consent, that the Court enter an order providing that the Government may file the CBI material in the Court's docket under seal. The remaining portion of the record will be publicly filed.

We thank the Court for its consideration of this request.

¹ Michael S. Regan, who became the Administrator of the Environmental Protection Agency on March 11, 2021, is automatically substituted for former Administrator Andrew R. Wheeler as the defendant in this action. *See* Fed. R. Civ. P. 25(d).

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Respectfully submitted,

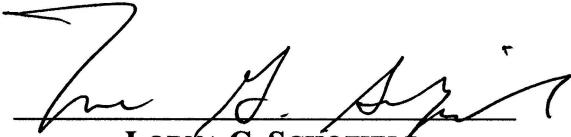
DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Allison M. Rovner
ALLISON M. ROVNER
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2691
Email: Allison.Rovner@usdoj.gov

cc: Counsel of Record (by ECF)

Application GRANTED. The EPA shall file the material potentially containing confidential business information under provisional seal. By **November 18, 2021**, if Plaintiff seeks to seal that material, Plaintiff shall file a letter providing the basis for sealing in accordance with the three-part test in *Lugosch*. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). If Plaintiff believes redactions are appropriate, it shall also submit proposed redactions attached to the letter.

Dated: November 9, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE